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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

A-533-875

Fine Denier Polyester Staple Fiber from India: Final Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Commerce) determines that fine denier polyester staple fiber (fine denier PSF) from India is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Patrick O'Connor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0989.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2018, Commerce published the *Preliminary Determination* of this antidumping duty investigation, as provided by section 735 of the Tariff Act of 1930, as amended (the Act). Commerce preliminarily found that fine denier PSF from India was sold at

LTFV.<sup>1</sup> A summary of the events that have occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by interested parties for this final determination, may be found in the Issues and Decision Memorandum.<sup>2</sup> The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

Commerce has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through 22, 2018. The revised deadline for the final determination in this investigation is now May 23, 2018.<sup>3</sup>

#### Scope Comments

We provided parties an opportunity to provide comments on all issues regarding product coverage (*i.e.*, scope).<sup>4</sup> Certain interested parties commented on the scope of the investigation as it appeared in the *Preliminary Determination*.<sup>5</sup> For a summary of the product coverage comments and rebuttals submitted to the record of this investigation, and our accompanying

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<sup>1</sup> See *Fine Denier Polyester Staple Fiber from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures* 83 FR 662 (January 5, 2018), and accompanying Preliminary Decision Memorandum (collectively, *Preliminary Determination*).

<sup>2</sup> See Memorandum, "Fine Denier Polyester Staple Fiber from India: Issues and Decision Memorandum for the Final Affirmative Determination in the Less Than Fair Value," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>3</sup> See Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

<sup>4</sup> See Memorandum, "Due Dates for Case and Rebuttal Briefs Regarding the Scope," dated December 11, 2017

<sup>5</sup> See *Preliminary Determination*.

discussion and analysis of the comments and rebuttals that were timely received, see the Final Scope Decision Memorandum.<sup>6</sup> Based on parties' comments, we made no changes to the scope of the investigation, as it appeared in the *Preliminary Determination*.<sup>7</sup> The product covered by this investigation is fine denier PSF from India. For a complete description of the scope of this investigation, see Appendix I.

### Verification

As provided in section 782(i) of the Act, in January and March 2018, we conducted a verification of the information reported by the mandatory respondent Reliance Industries Limited (RIL), for use in this final determination.<sup>8</sup> We used standard verification procedures, including an examination of relevant accounting and production records and original source documents provided by the respondent.

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of these issues is attached to this notice as Appendix II.

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<sup>6</sup> See Memorandum, "Fine Denier Polyester Staple Fiber from the People's Republic of China, India, Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Final Determinations," dated January 16, 2018 (Final Scope Memorandum).

<sup>7</sup> While we made no changes to the scope based on parties' comments, we discovered that we inadvertently included the phrase "or pre-opened" in the scope in the *Preliminary Determination*. This phrase was not included in the scope in the *Initiation*. See *Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 29023 (*Initiation*). We have corrected this error by removing the phrase "or pre-opened" from the scope for this final determination.

<sup>8</sup> See Memorandum, "Less-Than-Fair-Value Investigation of Fine Denier Polyester Staple Fiber from India: Verification of the Sales Questionnaire Responses of Reliance Industries Limited," dated March 13, 2018; and Memorandum, "Verification of the Cost Response of Reliance Industries Limited in the Less-Than-Fair-Value Investigation of Fine Denier Polyester Staple Fiber from India," dated March 27, 2018.

### Application of Adverse Facts Available (AFA)

As in the *Preliminary Determination*, pursuant to sections 776(a) and (b) of the Act, we have continued to base Bombay Dyeing & Manufacturing Company Limited's (Bombay Dyeing) dumping margin upon the facts otherwise available, with an adverse inference, because the company did not respond to Commerce's questionnaire. In addition, based on our verification findings, our re-evaluation of the record evidence, and our analysis of the comments received, we are also basing RIL's dumping margin on facts available with an adverse inference pursuant to sections 776(a) and (b) of the Act. For further discussion, *see* the Issues and Decision Memorandum.

### Changes Since the Preliminary Determination

As noted above, we are now basing RIL's dumping margin on facts available with an adverse inference. Moreover, we have revised the all-others rate as explained below.

### All-Others Rate

Section 735(c)(5)(A) of the Act provides that in the final determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate "shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act". Pursuant to section 735(c)(5)(B) of the Act, however, if "the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts otherwise available," Commerce "may use any reasonable method to establish the estimated weighted-average dumping margin for all-other

producers and/or exporters.”<sup>9</sup> Furthermore, Congress, in the SAA, stated that when “the dumping margins for all of the exporters and producers that are individually investigated are determined entirely on the basis of the facts available or are zero or de minimis... (t)he expected method in such cases will be to weight-average the zero and de minimis margins and margins determined pursuant to the facts available.”<sup>10</sup> For the final determination, Commerce has determined the estimated weighted-average dumping margin for each of the individually examined respondents under section 776 of the Act. Consequently, pursuant to section 735(c)(5)(B) of the Act, Commerce’s normal practice under these circumstances has been to calculate the “all-others” rate as a simple average of the alleged dumping margins from the petition.<sup>11</sup> In this case, however, we initiated using only one dumping margin in the petition. Therefore, for the final determination, we have used this one dumping margin, which is 21.43 percent, as the “All-Others” rate.<sup>12</sup>

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<sup>9</sup> See also Statement of Administrative Action (SAA), H.R. Doc. 103-316, 103d Cong., 2d Session, vol 1 (1994) SAA at 873 (explaining that if all the rates are “determined entirely on the basis of the facts available or are zero or de minimis,” the “expected method in such cases will be to weight-average” the rates available. See also *Albemarle Corp. & Subsidiaries v. United States*, 821 F.3d 1345, 1351-54 (Fed. Cir. 2016) (explaining and relying on the “expected method,” as directed by the SAA).

<sup>10</sup> See SAA accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316 at 873 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4200.

<sup>11</sup> See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; see also *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476, 14477 (March 14, 2014). See also *Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan*, 73 FR 39673, 39674 (July 10, 2008).

<sup>12</sup> See *Certain Cold-Rolled Steel Flat Products from Japan: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 32721 (May 24, 2016); *Notice of Final Determination of Sales at Less than Fair Value: Purified Carboxymethylcellulose from Sweden*, 70 FR 28278 (May 17, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value: Ferrovandium from the Republic of South Africa*, 67 FR 71136 (November 29, 2002).

### Final Determination

Commerce determines that the following estimated weighted-average dumping margins exist:

<b>Exporter/Producer</b>	<b>Estimated Weighted-Average Dumping Margin (percent)</b>	<b>Cash Deposit Rate (Adjusted for Subsidy Offset(s)) (percent)</b>
Reliance Industries Limited	21.43	14.48
Bombay Dyeing & Manufacturing Company Limited	21.43	15.49
All-Others	21.43	14.67

### Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of fine denier PSF from India as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after January 5, 2018, the date of publication of the *Preliminary Determination* of this investigation in the *Federal Register*.

Pursuant to section 735(c)(1)(B) of the Act and 19 CFR 351.210(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and

(3) the cash deposit rate for all other producers and/or exporters will be equal to the all-others estimated weighted-average dumping margin.

Further, Commerce will instruct CBP to require a cash deposit equal to the estimated amount by which the normal value (NV) exceeds the U.S. price, as shown above, adjusted where appropriate for export subsidies found in the final determination of the companion countervailing duty investigation. Consistent with Commerce's practice, where the product under investigation is also subject to a concurrent countervailing duty investigation, Commerce instructs CBP to require a cash deposit equal to the amount by which the NV exceeds the U.S. price, less the amount of the countervailing duty determined to constitute any export subsidies.<sup>13</sup> Because a countervailing duty order has been issued with respect to fine denier PSF from India and suspension of liquidation is occurring with respect to this order, Commerce will instruct CBP to require cash deposits adjusted by the amount of export subsidies, as appropriate. These adjustments are reflected in the final column of the rate chart, above.<sup>14</sup> Therefore, so long as suspension of liquidation continues under this antidumping duty investigation, the cash deposit rates for this antidumping duty investigation will be the rates identified in the final column of the rate chart, above. These suspension of liquidation instructions will remain in effect until further notice.

#### Disclosure

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<sup>13</sup> See, e.g., *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362, 61364 (October 13, 2015); *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413, 17417 (March 26, 2012).

<sup>14</sup> See *Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Final Affirmative Determination*, 83 FR 3122 (January 23, 2018); see also *Fine Denier Polyester Staple Fiber from the People's Republic of China and India: Amended Final Affirmative Countervailing Duty Determination for the People's Republic of China and Countervailing Duty Orders for the People's Republic of China and India*, 83 FR 12149 (March 20, 2018).

Normally, Commerce discloses to interested parties the calculations performed in connection with a final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the *Federal Register*, in accordance with 19 CFR 351.224(b). However, because Commerce applied AFA to the individually examined companies, RIL and Bombay Dyeing, in this investigation, in accordance with section 776 of the Act, and the applied AFA rate is based solely on the petition, there are no calculations to disclose.

#### International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the International Trade Commission (ITC) of its final affirmative determination. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2)(B) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of fine denier PSF from India no later than 45 days after Commerce's final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on appropriate imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

#### Notification to Interested Parties



This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.201(c).

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Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

May 23, 2018

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Date

## **Appendix I**

### **Scope of the Investigation**

The merchandise covered by this investigation is fine denier polyester staple fiber (fine denier PSF), not carded or combed, measuring less than 3.3 decitex (3 denier) in diameter. The scope covers all fine denier PSF, whether coated or uncoated. The following products are excluded from the scope:

(1) PSF equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 5503.20.0045 and 5503.20.0065.

(2) Low-melt PSF defined as a bi-component polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, which is currently classifiable under HTSUS subheading 5503.20.0015.

Fine denier PSF is classifiable under the HTSUS subheading 5503.20.0025. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

## **Appendix II**

### **List of Topics Discussed in the Issues and Decision Memorandum**

- I. Summary
- II. List of Issues
- III. Background
- IV. Scope of the Investigation
- V. Discussion of the Issues
  - Comment 1: Whether Commerce Should Apply Total Adverse Facts Available
  - Comment 2: Whether Commerce Should Apply Partial AFA to Certain Freight Expenses
  - Comment 3: Whether Commerce Should Reduce RIL's Billing Adjustments
  - Comment 4: Whether Commerce Should Reject RIL's Inland Freight to Warehouse
  - Comment 5: Whether Commerce Should Reject RIL's Reported Warranty Expenses
  - Comment 6: Whether Commerce Should Rely on RIL's Rebate and Commission Fields
  - Comment 7: Whether Commerce Should Correct an Error in RIL's Margin Program
  - Comment 8: Reliance Artificially Understated the Reported Costs by Reporting Chain Cost and Withholding the Cost Reconciliation in the Form and Manner Requested by Commerce
  - Comment 9: Reliance understated the Reported General and Administrative (G&A) Expenses
  - Comment 10: RIL Understated the Financial Expenses
- VI. Recommendation

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